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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Deployment of Wireline Services)

Offering Advanced Telecommunications Services)

CC Docket No. 98-147

OPPOSITION OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") hereby submits this Opposition to a Petition for Partial Reconsideration and/or Clarification ("Petition") filed June 1, 1999 by Sprint Corporation ("Sprint") in the above-captioned docket. Sprint requests that the Federal Communications Commission ("Commission") expand the physical collocation rules established in the First Report and Order issued herein on March 31, 1999.¹ In several material respects U S WEST opposes Sprint's requests.

I. INTRODUCTION

Much of Sprint's Petition is predicated on a notion of private property rights which is disturbing and cannot be left unchallenged. Sprint really seems to think that the private property of incumbent local exchange carriers ("ILEC") belongs to the government, or perhaps to Sprint itself, and that actual property ownership is irrelevant, or perhaps even evil. BellSouth's efforts to protect its own property are described as based on an unwillingness to "cede" its

¹ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, rel. Mar. 31, 1999.

“lucrative local telephone monopolies” and an effort to “thwart competition.”²

Sprint requests that the government actually prohibit ILECs from taking reasonable steps to protect their own network equipment,³ and to prevent ILECs from reserving space on their own property for planning more than one year into the future.⁴

The merits of these demands and others are discussed below. But as an introductory matter it is important to understand that Sprint fundamentally takes the right of citizens to hold private property far too casually. Collocation constitutes the quintessential governmental physical taking of property.⁵ Congress clearly has the power to engage in such property takings, subject to the Fifth Amendment to the Constitution. Congress has made the decision that ILEC property should be taken in some instances to promote telecommunications competition, and has delegated that power to the Commission in Section 251(c)(6) of the 1996 Telecommunications Act. In so doing, Congress has cast a heavy responsibility on the Commission, because the Constitution’s just compensation requirement is absolute, both as to the value of the property taken and as to any other damages caused by the taking. To the extent that the Commission’s rules or state decisions implementing Section 251(c) of those rules do not provide just compensation in full measure,

² Petition at 3, 4.

³ Id. at 3-6.

⁴ Id. at 7-9.

⁵ Bell Atlantic Telephone Companies, et al. v. FCC, 24 F.3d 1441 (DC Cir. 1994).

the United States treasury itself is exposed to make up the difference.

In other words, when the Commission moves from the realm of regulation into the realm of property seizure, the game and its stakes both change dramatically. The margin for error is smaller, and the consequences of error more dramatic. The mere fact that Sprint is dissatisfied with some of BellSouth's collocation policies cannot justify more intrusive governmental occupation of BellSouth's premises. U S WEST respects the will of Congress as expressed in Section 251(c)(6) of the Act, and has worked diligently to develop reasonable and meaningful collocation policies and procedures consistent with the Act. But U S WEST's private property is still private property fully protected by the Constitution, and U S WEST sees no need to apologize for any stance it takes in protecting that property.

II. ADJACENT CONTROLLED ENVIRONMENTAL VAULTS

Sprint first requests that the Commission "clarify" that "ILECs must provide requesting carriers with adjacent space collocation on property that is adjacent to ILEC premises when space inside ILEC premises is actually exhausted."⁶ This request is apparently based on testimony by BellSouth in a state arbitration proceeding in Florida to the effect that the Commission's collocation rules are inconsistent.⁷ Sprint does not say whether the Florida Commission accepted BellSouth's argument. U S WEST finds the Commission's rules in this regard self evident. If Sprint objects to a

⁶ Petition at 1 (emphasis in original).

⁷ Id. at 3 and Appendix A.

characterization which BellSouth is making of those rules in a state proceeding under Section 252(b) of the Act, the proper remedy is to appeal any adverse decision under Section 252(e)(6) of the Act. It would seem to be a strange waste of the Commission's resources indeed if it could be called upon to modify or clarify a rule every time an ILEC or a competitive local exchange carrier ("CLEC") made an argument in a state arbitration proceeding which a party did not like. U S WEST suggests that the Commission simply dismiss this part of the Petition on the basis that it is a procedurally improper attempt to interject the Commission into a state arbitration proceeding based solely on a pending argument in that proceeding.

III. SPRINT'S REQUEST THAT ILECS BE PROHIBITED FROM PROTECTING THEIR NETWORK EQUIPMENT MUST BE REJECTED

In a truly extraordinary request, Sprint "requests the Commission to clarify that ILECs may not require the construction of a wall or similar structure to separate ILEC equipment from CLEC equipment under cageless collocation arrangements." Sprint states that it desires to have the government grant it the right to "commingle [Sprint's] equipment in the same bays that house ILEC equipment."⁸

While U S WEST's policy concerning collocation has not led it to wall away or physically partition all or even most of its own equipment in a central office where collocation takes place, U S WEST could not possibly give up the right to protect the security of its network simply to allow Sprint more

⁸ Id. at 4.

collocation opportunities. The government still relies on U S WEST's network for many critical emergency and security functions, and we have seen nothing in the 1996 Act which indicates a desire on the part of the government that these emergency and security functions be compromised. Indeed, if local service were disrupted in any material manner, we have no doubt that the government, headed by the Commission, would be quickly on the scene seeking explanations. U S WEST is fully within its obligations, not just its rights, to take all necessary steps to protect its network equipment and the integrity of its network services. Additional investment which must be made to ensure such protection is part of U S WEST's right to just compensation for the collocation taking. If Sprint does not pay this compensation, the federal treasury will need to make up the loss to the ILEC. Simply stated, not only can the government not deprive U S WEST of the right to protect its property, it would be unwise in the extreme to do so.

We note here that Sprint's assertion that ILEC security concerns should be limited to "electrical interference" is quite wrong.⁹ Network injuries caused by vandalism, negligence and the like present very real and legitimate concerns. There are legitimate reasons to wall away or partition portions of the central office, such as those containing digital switches and signal transfer points, which are susceptible to temperature fluctuations and particulate contamination. In addition, switch maintenance centers need security in order that unauthorized persons cannot input commands into exchange switches,

⁹ Id. at 6.

possibly disabling the network itself. And even if vandalism and sabotage were not possibilities, simple negligence can cause massive harm to sensitive network equipment.

On a more granular note, Sprint's request for the right to place equipment in the "same bays that house ILEC and CLEC equipment" requires some additional comment. If, by "bay", Sprint means location of CLEC equipment shelves in bays owned by ILECs and used for ILEC equipment, the request is infeasible as well as unlawful. A single equipment bay often has control circuit packs on one or more shelves at the top of the bay that communicate functions to the packs below. These control circuit packs are usually manufacturer specific and are not compatible with the equipment of other manufacturers. Collocation of ILEC and CLEC equipment in shelves in single equipment bays owned by both ILECs and CLECs is simply impossible to administer -- indeed, it could be technically infeasible, depending on the manufacturer of the equipment. If Sprint is instead talking about what U S WEST calls "lineups," which are contiguous rows of equipment bays placed on the floor of the central office and which are designed to house multiple bays, it is technically possible to house the bays of different companies within a single lineup. In fact, U S WEST has permitted this latter type of collocation since August of 1998.

As an additional security observation, U S WEST serves seven states which have "severe earthquake zone" requirements for bay strength and

construction.¹⁰ Bays in those areas (common lineups using cageless or virtual collocation) would need to be rated to earthquake NEBS 3 requirements. Otherwise communications provided by U S WEST could be disrupted at the very moment of an emergency, when telecommunications could be most critical. In addition, non-earthquake rated bays would pose safety hazards to personnel and equipment due to tipping over of bays, listing of bays or bay components (e.g., circuit packs) being ejected from the bays during earthquake shaking, even if not in common lineups.

There is no need to go more deeply into the security issue. U S WEST is responsible for providing reliable network services, especially during emergencies. The Commission would be very ill advised to take steps which could prevent U S WEST from protecting its ability to provide this service.

IV. RESERVATION OF COLLOCATION SPACE

Sprint requests that the Commission “require incumbents and collocators to limit any reservation of collocation space to one year and only if that reservation is made pursuant to specific business plans to utilize that space.”¹¹ Several comments are in order.

First, effective switch planning and service deployment requires considerably longer than a year, especially in more crowded offices where building additions or space grooming often require a year or more in themselves. U S WEST views space planned for specific business plans as

¹⁰ Washington, Oregon, Montana, Idaho, Utah, Wyoming and Arizona.

¹¹ Petition at 7.

actually assigned in use, not waiting for future use. Sprint's request would, if adopted, forcibly intrude into space which U S WEST has earmarked for specific equipment placement and could materially disrupt U S WEST's deployment and offering of services. Sprint's proposal could also prevent U S WEST from engaging in equipment planning beyond a year in advance, with resulting delays in effective switch deployment as well as delays in access to unbundled network elements ("UNE") by other parties.

In fact, manufacturers' guidelines such as Lucent Technologies Distributing Frame Planning and Engineering Guide and Telcordia's Optical Cross Connect Planning and Engineering guide recommend that carriers engineer growth areas for MDFs and DSXs on projections out to 20 years when the devices are initially deployed and planned. While U S WEST agrees that 20 years would not be realistic in today's world, this figure illustrates just how important prudent advance space planning can be for a carrier. Government seizure of the property which U S WEST has assigned to meet its own network needs would not be sound public policy. If an ILEC is abusing the collocation statute by claiming as assigned space property which is not actually part of its assigned space, the Commission can deal with that issue at the time it arises. To adopt the proposal of Sprint would simply be completely unrealistic.

V. COLLOCATION TIME FRAMES

Finally, Sprint requests that the Commission "impose a minimum standard interval of no more than 90 calendar days in which a requesting carrier must be allowed to physically collocate at a particular LEC premises, so

long as previously conditioned or prepared space is available.”¹² If there is no conditioned space available, Sprint requests that its collocation request be met within 180 days. This request is based on nothing at all, other than Sprint’s conclusion that ILECs might delay carrier collocation requests “as a way of impeding competition.”¹³ Even by the fact-absent standards of the Sprint Petition, this request is pitiful.

Moreover, the time limits proposed by Sprint are far too limiting to be put into a rule. Even in the case of conditioned or prepared space, power plant additions can take more than ninety days. It certainly can take more than 180 days in the case of space not actually prepared, not to mention the time required if building additions or modifications are entailed. Further, the ILEC is not always the sole determinant of collocation completion. ILECs are dependent upon equipment availability, manufacturers’ stocks, timely delivery and availability of personnel in preparing collocation space. Of course, such is not always so, but Sprint completely fails to identify what it is talking about when it puts forth its proposed time limits, and thus its request is really unintelligible. Similarly, the suggestion by Sprint that ILECs advertise all offices without a “sufficient” amount of prepared or conditioned potential collocation space is just silly. As Sprint fails to identify or define any of the terms in its proposal in this regard, its suggestions should be rejected out of hand.

¹² Id. at 10.

¹³ Id.

VI. CONCLUSION

For the foregoing reasons, the Sprint Petition should be denied.

Respectfully submitted,

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July 12, 1999

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 12th day of July, 1999, I have caused a copy of the foregoing **OPPOSITION OF U S WEST COMMUNICATIONS, INC.** to be served, via first-class United States Mail, postage pre-paid, upon the persons listed on the attached service list.


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